

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P 2979/PCT B15	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/001005	International filing date (day/month/year) 04.02.2004	Priority date (day/month/year) 16.04.2003
International Patent Classification (IPC) or national classification and IPC		
Applicant WITTENSTEIN AG		

1.	This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.																								
2.	This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.																								
3.	This report is also accompanied by ANNEXES, comprising: <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>7</u> sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																								
4.	This report contains indications relating to the following items: <table border="0"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/001005

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 3-9 as originally filed/furnished
- pages* 1, 2, 2a, 2b received by this Authority on 02.09.2004 with letter of 02.09.2004
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 1-11 received by this Authority on 02.09.2004 with letter of 02.09.2004
- nos.* _____ received by this Authority on _____
- ☒ the drawings:
- sheets 1/4-4/4 as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/001005

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-11	YES
	Claims		NO
Inventive step (IS)	Claims	1-11	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

1. Reference is made to the following document:

D1: DE 197 08 279 A (BETZ AUGUSTIN PROF DR MED;
BAUMGART RAINER (DE)), 10 September 1998
(1998-09-10)

2. Novelty and inventive step2.1 Independent claim 1

DE 197 08 279 (document D1), which is considered to be the prior art closest to the subject matter of claim 1, discloses the following (the references in parentheses are to D1):

Device for lengthening bones (figure 1) or bone segments for segment transport, with at least two elements that can move relative to each other, wherein at least one locking element (81) is axially movable in or along a guide element (10, 11), and the at least one locking element (81) is driven to move axially in or along the guide element (10, 11) by a drive device (18), and the

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

drive device (18) consists of a motor element (motor drives are disclosed in the documents cited in D1), optionally connected to a transmission and a control unit, and of a spindle element (30) connected to either the motor element or the transmission, the spindle element (30) being a threaded pin (33).

The subject matter of claim 1 differs from the known device in that:

- the at least one locking element is seated directly on the spindle element;
- the threaded pin passes through and engages the at least one locking element.

The subject matter of claim 1 is therefore novel (PCT Article 33(2)).

The problem addressed by the present invention can thus be seen as that of providing a device of the same type that offers a greater distraction distance than the prior art devices and has fewer structural features.

The solution proposed in claim 1 of the application involves an inventive step (PCT Article 33(3)) because the locking element is seated directly on the spindle element, which in turn passes through and engages the locking element. Consequently there is no need for the inner part (20) in the device described in D1. This increases the distraction distance and the segment

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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transport distance, and also optimises the dimensions of a device of this type.

2.2 Dependent claims 2 to 11

Claims 2 to 11 are dependent on claim 1 and therefore also meet the PCT requirements in respect of novelty and inventive step.

3. Industrial applicability

Claims 1 to 11 are clearly industrially applicable, and therefore the requirement of PCT Article 33(4) is met.